

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)
)
Specialty Consulting Services, Inc.)
dba)
Spiffy Ice and)
Cold Storage, Inc.)
3500 South West Temple)
Salt Lake City, Utah)
)
Respondent)
_____)

CONSENT AGREEMENT

Docket No. **EPCRA-08-2003-0002**

Docket No. **CERCLA-08-2003-0016**

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”), and Specialty Consulting Services, Inc. dba Spiffy Ice and Cold Storage, Inc. (“Respondent”), by their undersigned representatives, hereby consent and agree as follows:

Statutory Authority

1. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits set forth at 40 C.F.R. Part 22.
2. EPA is authorized to issue civil administrative actions and assess civil penalties for violations of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9601, et seq., and their implementing regulations.

3. EPA and the Respondent (collectively referred to as the “parties”) have agreed to the settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b), and to execute this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) to simultaneously commence and conclude this matter upon issuance of a final consent order.

ALLEGATIONS

4. Respondent is the owner and operator of an ice making operation at 3500 South West Temple, Salt Lake City, UT (the “Facility”).

5. On December 19, 2002 at or around 6:00 a.m., approximately twenty-two hundred pounds of anhydrous ammonia was released from Respondent’s Facility due to equipment malfunction.

6. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that a person in charge of a facility, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (“RQ”), immediately notify the National Response Center.

7. Anhydrous ammonia is a hazardous substance as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a reportable quantity (“RQ”) of 100 pounds as set forth in 40 C.F.R. Part 302, Table 302.4. Anhydrous ammonia is also an extremely hazardous substance as defined in EPCRA Section 302, 42 U.S.C. § 11002, and as set forth in 40 C.F.R. Part 355. The RQ for anhydrous ammonia under EPCRA and CERCLA is the same.

8. Respondent did not immediately notify the National Response Center of the anhydrous ammonia release at the Facility as soon as Respondent had knowledge of the release.

9. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

10. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to immediately notify the State Emergency Response Commission ("SERC") when there has been a release of a hazardous substance or an extremely hazardous substance in an amount equal to or greater than the RQ.

11. Respondent did not immediately provide notice to the SERC after the release at the Facility as required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

12. Respondent violated the notification requirements to the SERC under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

13. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act ("OSHA") of 1970, 29 U.S.C. § 651 et seq., shall submit to the SERC and fire department with jurisdiction over the facility, by March 1, a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the information required by that section for each such hazardous chemical present at the facility in quantities equal to or greater the established threshold. The hazardous chemical inventory form for each hazardous chemical is to be submitted annually on or before March 1.

14. Respondent was required to submit an emergency and hazardous chemical inventory form for anhydrous ammonia because it was storing quantities of the chemical in excess of the chemical's established five hundred (500) pound threshold.

15. Respondent did not submit a completed emergency and hazardous chemical inventory form for anhydrous ammonia by March 1, 2002, to the SERC and fire department with jurisdiction over the Facility.

16. Respondent violated the reporting requirements to the SERC and fire department for anhydrous ammonia pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

17. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Consent Agreement, however, Respondent neither admits or denies EPA's specific factual allegations contained herein.

SETTLEMENT

Civil Penalty

18. Pursuant to CERCLA § 109(a)(1)(A), 42 U.S.C. § 9609(a)(1)(A), and EPCRA § 325(b)(C), 42 U.S.C. § 11045(b)(C), EPA has considered 1) the nature, circumstances, extent and gravity of Respondent's violations; 2) the Respondent's prior compliance history; 3) the Respondent's degree of culpability; 4) the Respondent's economic benefit or savings resulting from the violations; 5) the Respondent's ability to pay the proposed penalty; and 6) any other matters that justice requires may be considered, and has determined that an appropriate civil penalty to settle this action is Five Thousand Dollars (\$5000.00).

19. Respondent consents, for the purpose of settlement, to the issuance of a final consent order and to the payment of the civil penalty cited in the foregoing paragraph. Respondent also consents, for the purpose of settlement, to the performance of the SEP described below.

20. Within thirty (30) days of receiving a signed final consent order in this matter, Respondent shall remit a cashier's or certified check for the amount specified in paragraph 18

above. Respondent shall make its check payable to "Treasurer, United States of America," and mail it to:

Mellon Bank

EPA Region 8

(Regional Hearing Clerk)

P.O. Box 360859M

Pittsburgh, PA. 15251

The check shall reference the Respondent's name and address, and the EPA docket numbers of

this action. A copy of the check shall be sent simultaneously to:

Cheryl Turcotte

Enforcement Specialist, 8ENF-T

U.S. Environmental Protection Agency, Region 8

999 18th St., Suite 300

Denver, Colorado 80202-2466

and

Tina Artemis, Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 8

999 18th St., Suite 300

Denver, Colorado 80202-2466

21. In the event Respondent fails to pay or does not pay the full amount of its civil penalty by the due date, Respondent shall pay interest and late charges as specified in paragraph 34 below.

Supplemental Environmental Project

22. Description of the SEP

- a. Respondent shall undertake the performance of a SEP that shall entail either the design and installation of: (i) an ammonia dispersion (“quench”) system to prevent future releases of anhydrous ammonia from Respondent’s Facility; (ii) a computerized monitoring system to detect and control releases of anhydrous ammonia from Respondent’s Facility or, (iii) a combination of (i) and (ii) above.
- b. Respondent shall complete the work not more than nine (9) months from the date of the final consent order in this matter unless the parties agree in writing to an extension of the completion date.

23. The total expenditure for the SEP shall be not less than Forty Thousand Dollars (\$40,000). Respondent shall provide EPA with documentation of the expenditures made in

connection with the SEP as part of the SEP Completion Report.

24. Respondent hereby certifies that, as of the date of this Consent Agreement,

it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent

further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

25. SEP Reports

a. Respondent shall submit a final project work plan that fully outlines the scope of the project(s), including a schedule of work and cost estimates, for EPA approval within seventy-five (75) days of the final consent order.

b. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the final SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating, implementing or performance problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,

(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.

c.. Respondent agrees that failure to submit the SEP Completion Report or other reports required by this paragraph, shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees in accordance with paragraph 31 below.

26. Respondent agrees that EPA may inspect the location where the SEP is being performed at any time in order to confirm that the SEP is being constructed and/or implemented consistent with the final project work plan, schedule of work and representations made herein.

27. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement, and shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. EPA acceptance of SEP Reports.

- a. Following receipt of any of the SEP Reports described in paragraph 25 above, EPA will do one of the following: (i) accept the SEP Report; (ii) reject the SEP Report with notification to Respondent in writing of deficiencies in the SEP Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Report and seek stipulated penalties in accordance with paragraph 31 herein.
- b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a

result of any such deficiency or failure to comply with the terms of this
Consent Agreement.

29. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

30. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

Cheryl Turcotte
Enforcement Specialist, 8ENF-T
U.S. Environmental Protection Agency, Region 8
999 18th St., Suite 300
Denver, Colorado 80202-2466

Stipulated Penalties and Late Fees

31. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described in paragraph 22 above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure described in paragraph 23 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. If the work plan submitted pursuant to paragraph 25(a) is determined to be

unsatisfactory and unacceptable, Respondent shall pay a stipulated penalty to the United States in the amount of Thirty Thousand Dollars (\$30,000.00).

b. Except as provided in subparagraph (c) immediately below, if the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of Fifty Thousand Dollars (\$50,000.00).

c.. If the SEP has not been completed satisfactorily, and Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was

required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

d. If the SEP has been satisfactorily completed, and Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay Forty Thousand Dollars (\$40,000), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.

e. For failure to submit the SEP Completion Report required by paragraph

25(b) above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of One Hundred Dollars (\$100) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

f. For failure to submit the SEP final project work plan report required by paragraph 25(a) above, Respondent shall pay to the U.S. Treasury within thirty (30) days of written demand by EPA a stipulated penalty in the amount of One Hundred Dollars (\$100) for each calendar day after the day the report was originally due until the report is received by EPA.

32. Stipulated penalties for subparagraphs 31(e) and 31(f) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

33. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 20 above. Interest and late charges shall be paid as stated in the paragraph below.

34. Interest on the civil penalty amount shall accrue from the date of the receipt of the signed final consent order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Interest on the stipulated penalty amount shall begin to accrue 31 days

after Respondent's receipt of EPA's demand for such penalties. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first thirty (30) days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days.

GENERAL PROVISIONS

35. This Consent Agreement is subject to and in accordance with 40 C.F.R. part 22.

36. Respondent waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and knowingly agrees to waive its right to a hearing on this matter under Section 325(b)(B) of EPCRA, 42 U.S.C. § 11045(b)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

37. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibility under this Consent Agreement.

38. Nothing in this Consent Agreement shall relieve Respondent of its duty to comply with CERCLA and EPCRA and their implementing regulations. Furthermore, this Consent Agreement and final consent order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this agreement.

39. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001, et seq., and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9601.”

40. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

41. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs, interest, or any appropriate penalty, not inconsistent with this Consent

Agreement, associated with any collection action instituted as a result of Respondent’s failure to perform pursuant to the provisions of this Consent Agreement.

42. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to execute and legally bind the party to the terms and conditions of this Consent Agreement.

43. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

44. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the violations alleged herein.

45. Each party agrees to bear its own costs and attorneys fees in connection with these

matters.

46. This Consent Agreement contains all terms of the settlement agreed to by the parties.

EFFECTIVE DATE

47. This Consent Agreement shall become effective upon filing with the Regional Judicial Officer.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: 9/24/03

By: **SIGNED**

Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9.23.03

By: **David J. Janik**

Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/23/03

By: **SIGNED**

Richard H. Baird (#29718)
Senior Enforcement Attorney
Legal Enforcement Program
EPA Region 8
999 18th Street, Suite 500
Denver, Colorado 80202-2466
Telephone No.: (303) 312-6642
Facsimile No.: (303) 312-6953

SPECIALTY CONSULTING SERVICES, INC.
dba
SPIFFY ICE AND COLD STORAGE, INC.

By: **Aaron Kingston**

Its: **Spiffy Ice, General Manager**

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **SPECIALITY CONSULTING SERVICES, INC., d/b/a SPIFFY ICE AND COLD STORAGE, INC DOCKET NOs.: EPCRA-08-2003-0002 and CERCLA-08-2003-0016** was filed with the Regional Hearing Clerk on September 25, 2003

Further, the undersigned certifies that a true and correct copy of the document was delivered to Richard Baird, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 25, 2003, to:

Spiffy Ice and Cold Storage, Inc.
Aaron Kingston, General Manager
3500 S. West Temple
Salt Lake City, UT 84115

September 25, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
SEPTEMBER 25, 2003.**